

## **REMARKS**

Applicant respectfully requests consideration and allowance of claims 1-4, 7-11, 14 and 17 pending in the above-identified patent application in view of the following discussion.

### **I. New Matter**

On page 2 of the subject Final Office Action, the Examiner contends that Fig. 4B adds new matter and requires cancellation of the same. Applicant submits that a dosing slide that is rotatable in its receptacle between its filling and dispensing positions is fully disclosed in the original specification as filed at page 7 second paragraph. At this portion, an embodiment of the dosing device is disclosed wherein it is proposed to use as the dosing element a dosing slide on which a dosing chamber is formed and which is movable in a channel between its filling position and its dispensing position. Alternatively, the use of a rotary slide as a dosing element is also proposed wherein this slide is rotatable in a receptacle between its filling position and its dispensing position. Both the dosing slide which is movable along a channel and the rotary slide are easily operated. (See applicant's specification as filed page 7 second paragraph). In view of the aforementioned support in the specification as filed withdrawal of this rejection is requested.

### **II. Rejection of claims 9, 10 under 35 U.S.C. § 112**

At page 2 of the Office Action, the Examiner rejected claims 9 and 10 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, alleging that the rotatable dosing elements are not described in the specification. Applicant respectfully traverses the rejection.

Regarding the Examiner's rejection of claims 9 and 10 Applicant submits that the rotary slide is fully described in the specification as originally filed. The specification particularly states that "the use of a rotary slide as [a] dosing element is proposed, this slide being rotatable in a receptacle between its filling position and its dispensing position" (*see* pages 7 and 16 of Applicant's specification, and FIGS. 2-3). From the specification and drawings, it is evident, for example, that dosing chamber 52 can be charged with a preparation, and subsequently rotated to empty or deliver the preparation out dispensing opening 28. Therefore, it can be seen that based on the original specification as filed, Applicant had possession of the rotary slide as of the filing

date of the application. Additionally, claims 9 and 10 were part of the application when filed. Original claims form part of the original disclosure. See *In re Gardner*, 475 F.2d 1389, 177 USPQ 396 (CCPA 1973). Accordingly, the rejection of claims 9 and 10 is traversed and the Examiner is respectfully requested to withdraw the § 112, first paragraph, rejection.

### **III. Rejection of claims 1-4, 7, 8, 11, 14 and 17 under 35 U.S.C. § 102**

At page 4 of the Office Action, the Examiner rejected claims 1-5, 7, 8, 10-14, 17 and 18 under 35 U.S.C. § 102(b) as being anticipated by Biondo (U.S. 4,023,715). Applicant respectfully requests that this rejection be withdrawn for at least the following reasons.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236; 9 USPQ2d 1913, 1920 (Fed.Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831; 15 USPQ2d 1566 (Fed.Cir. 1990).

The claimed subject matter generally relates to a dosing device for dispensing products in the form of pellets, granules and the like. To this end, independent claim 1 recites "a dosing element with a dosing chamber for accommodating a defined partial amount of the preparation, the dosing chamber having releasably fixed volume inserts with different external dimensions in order to set the volume of the dosing chamber to a defined partial quantity of preparation, wherein the dosing chamber is movable between a filling position, in which it is to be filled with preparation from the chamber, and a dispensing position in which the preparation from the dosing chamber is to be discharged from the dosing device." Similarly, independent claim 17 also recites, "transferring a defined partial quantity of the first preparation into a first dosing chamber of a variable volume, the first dosing chamber having releasably fixed volume inserts with different external dimensions in order to set the volume of the first dosing chamber to a defined partial quantity of preparation."

Biondo does neither expressly nor inherently describe each and every element of claim 1. Specifically, Biondo does not describe the volume inserts with different external dimensions. Biondo discloses devices for measuring and dispensing flowing material, for example, granular alloy or metal and mercury used in making fillings for teeth. (See Biondo col. 1 lines 10-15).

Accordingly, a body member with an internally screw-threaded socket or recess receives the neck of a container and a port adapted in one position to communicate with a transverse passage or measuring chamber in a slidable measuring and dispensing member which is movable into another position wherein the measuring chamber communicates with a discharge passage in the body. (*See Biondo Abstract*). Biondo also discloses a spring biased valve member within an axial bore in the measuring and dispensing member and is under control of a slidable cam abutting the valve. At section 5 of the subject Office Action, it is erroneously contended that Biondo discloses the claimed volume inserts. Rather, Biondo discloses a single cam member with fixed external dimensions and calibrations marked from A to E so that the dispensing member can be set for desired dosage by reference to the calibrations. (*See Biondo col. 3 lines 35-40*).

In contrast the claimed subject matter relates to volume inserts with different external dimensions that can be attached releasably within the dosing chamber thereby adjusting its volume. (*See applicant's specification as filed page 6 last paragraph*). The single cam member with different calibrations as disclosed by Biondo is not identical to the claimed volume inserts.

Claims 2-4, 7-11 and 14 each ultimately depend from independent claim 1, each includes all elements of claim 1, and each recites additional patentable subject matter, and accordingly each such dependent claim is also allowable over the cited art. In view of the foregoing, Applicant submits that claims 1-4, 7-11 and 14 presently pending in the application are in condition for allowance.

As, independent claim 17 also recites similar features as claim 1, for similar reasons as regards claim 1 as discussed herein, Biondo does not anticipate claim 17. Therefore, claim 17 is in condition for allowance.

**Conclusion**

In view of the foregoing, Applicant submits that claims 1-4, 7-11, 14 and 17 currently pending in the above identified application are in condition for allowance. Therefore the Examiner is respectfully requested to withdraw the rejections, and accordingly, both reconsideration of this application and allowance of claims 1-4, 7-11, 14 and 17 are solicited. Applicant respectfully requests early and favorable action in view of the above remarks and amendments. It is not believed that any fees are due. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

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Respectfully submitted,

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